IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11079 of 2005
To
SPECIAL CIVIL APPLICATION No. 11083 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Petitioner(s)

Versus

PRAGJEEBHAI BIZALBHAI SOLANKI - Respondent(s)

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Appearance :
MR. H.D.DAVE, ASSTT. GOVERNMENT PLEADER for Petitioner(s) : 1 - 2.
MR PREMAL S RACHH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/08/2005

COMMON ORAL JUDGMENT

1.As common questions of law and facts arise, all these Special Civil Applications are being heard, decided and disposed of by this common judgment and order.

2.In this group of petitions, the common petitioners have challenged the legality and validity of the common judgment and award passed by the Labour Court, Bhavnagar dated 13.10.2004 passed in Reference (LCB) Nos.188/1995, 343/1994, 676/1993, 675/1993 and 651/1993 by which the Labour Court, Bhavnagar has directed the petitioners to reinstate the concerned respondents workmen to their original posts without any backwages, however, with continuity of services.

3.All the respondents workmen were serving as Khalasi on work-charge establishment as a Daily Wager on work charge basis. It is the case of the petitioners that as and when the work was available, they were offered the work. All the respondents workmen raised industrial disputes challenging their alleged termination w.e.f. 15.10.1985 and the said disputes were referred to the Labour Court, Bhavnagar by way of aforesaid References. It was contended on behalf of the concerned respondents workmen that they were working since last 3 years and their services came to be terminated without following any procedure as required under Section 25-F of the I.D.Act i.e. without any notice, notice pay and/or retrenchment compensation and therefore, it was

requested to reinstate them in services. Before the Labour Court, Bhavnagar the respondents workmen submitted that the other workers who were similarly situated and who were working with them were taken back on duties by the Joint Secretary, Narmada & Water Resources Department, State of Gujarat, by order dated 20.11.1995 and therefore, it was submitted that when those employees who were serving with them were taken back on duties, similar treatment was required to be given to them by the petitioners and therefore, it was requested to reinstate them.

The aforesaid References were resisted by the petitioners by submitting that all the respondents workmen were serving as daily wager on work charge establishment. They do not have any right on the posts and as and when the work was available they were offered the work and therefore, there is no retrenchment by them as their cases are covered by Section 2(oo)(bb) of the I.D.Act and there is no breach of Section 25-F of the I.D.Act and therefore, it was requested to allow the present Special Civil Application.

4.The Labour Court by its common judgment and order dated

13.10.2004 after considering the evidence on record and giving an opportunities to all the concerned parties, partly allowed the aforesaid References directing the petitioners to reinstate the respondents workmen without backwages considering the order passed by the Joint Secretary, Narmada & Water Resources Department, State of Gujarat, dated 20.11.1995 by which other similarly situated daily work charge Clerks/Khalasis who were serving with the respondents workmen came to be reinstated and taken back on duties. Being aggrieved and dissatisfied with the common judgment and award passed by the Labour Court, Bhavnagar dated 13.10.2004, the petitioners had preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

5. Shri H.D.Dave, learned AGP has assailed the common judgment and award passed by the Labour Court on the ground that it was a case under Section 2(oo)(bb) of the I.D.Act and as all the respondents workmen were serving as daily wager on work charge basis and therefore, there is no question of retrenchment and when the Labour Court has specifically held that there is no breach of Section 25-F of the I.D.Act, the Labour Court has materially erred in directing the petitioners

to reinstate the respondents workmen with continuity of services and therefore, it is requested to allow the present Special Civil Applications.

6.Shri. Premal S. Rachh, learned advocate appears on behalf of the respondents workmen. While opposing the present Special Civil Applications has submitted that the Labour Court has relied upon and considered the order passed by the State Government dated 20.11.1995 by which other work charge Khalasis appointed with the respondents workmen, were taken back on duties and therefore, it was a case of breach of Section 25-G of the I.D.Act and therefore, the Labour Court has rightly held that there is a breach of Section 25-G of the I.D.Act as workmen junior to the respondents workmen are taken back on duties and the same is not required to be interfered with by this Court exercising powers under Articles 226 and 227 of the Constitution of India. Therefore, it is requested to dismissed the present Special Civil Applications.

7.Shri H.D.Dave, learned AGP is not in a position to show how the Labour Court has committed an error in relying upon and considering the order passed by the State Government i.e. Joint Secretary, Narmada & Water

Resources Department, State of Gujarat, dated 20.11.1995 by which other similarly situated workmen on work charge establishment serving with the respondents workmen came to be reinstated. In view of the above, the Labour Court has held that though there is no breach of Section 25-F of the I.D. Act but the action of the respondents is in breach of Section 25-G of the I.D. Act and accordingly directed the petitioner to reinstate the respondents workmen, cannot be said to be in any way illegal and/or perverse which requires interference of this Court exercising powers under Articles 226 and 227 of the Constitution of India. Under the circumstances, no interference is required at the hands of this Court exercising powers under Articles 226 and 227 of the Constitution of India. However, Shri H.D.Dave, learned AGP is right in his submission that even on reinstatement, the respondents workmen are required to be reinstated to their original posts i.e. as daily wager work charge and therefore, it is clarified while confirming the common judgment and award passed by the Labour Court, Bhavnagar that the respondents workmen will be reinstated and are required to be reinstated to their original posts i.e. as daily wager work charge and they will not be having any more status than that.

8.For the reasons stated above and with the above clarification, the present Special Civil Applications are disposed of while confirming the common judgment and award passed by the Labour Court, Bhavnagar impugned in the present Special Civil Applications to the above extent only. Rule in each of the matters are accordingly, discharged, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.